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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN JOSE DIVISION

15 SYMANTEC CORPORATION,
16 a Delaware Corporation,

17 Plaintiff,

18 v.

19 CROSSROADS SYSTEMS, INC.
20 a Texas Corporation

21 Defendant.

C08 05687

Case No. _____

HRL

COMPLAINT FOR DECLARATORY
JUDGMENT

DEMAND FOR JURY TRIAL

23 COMPLAINT

24 Plaintiff Symantec Corporation ("Symantec") hereby pleads the following claims
25 for Declaratory Judgment against Defendant Crossroads Systems, Inc. ("Crossroads"), and
26 alleges as follows:
27
28

ORIGINAL

LATHAM & WATKINS
ATTORNEYS AT LAW
LOS ANGELES

COMPLAINT FOR
DECLARATORY JUDGMENT

FAXED

PARTIES

1. Plaintiff Symantec is a Delaware Corporation with its principal place of business at 20330 Stevens Creek Boulevard, Cupertino, California 95014-2132.

2. On information and belief, Defendant Crossroads is a Texas Corporation with its principal place of business at 11000 MoPac Expressway, Austin, Texas, 78759.

JURISDICTION AND VENUE

3. The Court has subject matter jurisdiction over this action and the matter pleaded herein under 28 U.S.C. §§ 1331 and 1338(a) because the action arises under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the Patent Act of the United States, 35 U.S.C. § 1, *et seq.*

4. Venue is proper in the United States District Court for the Northern District of California pursuant to 28 U.S.C. § 1391(b)(2) in that a substantial part of the acts giving rise to the claim occurred in this District, and Crossroads is subject to personal jurisdiction in this District.

INTRADISTRICT ASSIGNMENT

5. This action for a declaratory judgment of non-infringement and invalidity of patents is assigned on a district-wide basis under Civil L.R. 3-2(c).

GENERAL ALLEGATIONS

6. This action involves U.S. Patent No. 5,941,972 ("the '972 patent") attached hereto as Exhibit A, U.S. Patent No. 6,425,035 ("the '035 patent"), attached hereto as Exhibit B, U.S. Patent No. 6,421,753 ("the '753 patent"), attached hereto as Exhibit C, U.S. Patent No. 6,763,419 ("the '419 patent"), attached hereto as Exhibit D, U.S. Patent No. 6,738,854 ("the '854 patent"), attached hereto as Exhibit E, U.S. Patent No. 6,789,152 ("the '152 patent"), attached hereto as Exhibit F, and U.S. Patent No. 7,051,147 ("the '147 patent"), attached hereto as Exhibit G (collectively "the patents-in-suit"). The '035, '753, '419, '854, '152 and '147 patents all claim priority to the '972 patent.

7. On August 26, 2004, Crossroads sent a letter to Veritas Software Corporation ("Veritas") offering Veritas a license to the '972 and '035 patents in exchange, in part, for "a

1 royalty rate as a percentage of the net sales of [Veritas] products covered by the '972 or '035
2 Patents."

3 8. Veritas requested Crossroads to provide Veritas with the basis for
4 Crossroads' assertions that any of the products or offerings of Veritas were covered by any
5 claims of the '972 and/or '035 patents. Crossroads indicated that it could not provide such
6 information to Veritas without a non-disclosure agreement in place. The parties discussed the
7 non-disclosure agreement for a short period, but did not ultimately reach such an agreement.
8 Veritas again requested Crossroads' basis for its claims. But the basis was never provided and
9 the parties had no further communication after the first quarter of 2005 until Crossroads suddenly
10 reappeared in December of 2008. In 2005, Symantec acquired Veritas.

11 9. On December 12, 2008, Crossroads sent a letter to Symantec offering a
12 license to the patents-in-suit for "any/all products, potentially including the various storage
13 foundation products acquired from Veritas" in exchange, in part, for "a running royalty on the
14 net sales of products using the patented access controls feature."

15 10. Upon information and belief, Crossroads contends that one or more of
16 Symantec's products infringe one or more claims of the patents-in-suit and that those claims are
17 valid, although it still has provided Symantec with no basis for such contentions.

18 11. Symantec denies that any of its products infringe any claim of the patents-in-
19 suit, and also denies that the patents-in-suit are valid.

20 **FIRST CLAIM FOR RELIEF**

21 **Declaratory Relief Regarding Non-Infringement**

22 12. Symantec incorporates herein the allegations of paragraphs 1-11.

23 13. An actual and justiciable controversy exists between Plaintiff Symantec and
24 Defendant Crossroads as to the non-infringement of the patents-in-suit, which is evidenced by
25 Crossroads' allegations that Veritas' products, later acquired by Symantec, as well as other
26 Symantec products infringe valid claims of the patents-in-suit, and Symantec's allegations
27 herein.

1 14. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*,
2 Symantec requests the declaration of the Court that Symantec does not infringe and has not
3 infringed any claim of the patents-in-suit.

4 **SECOND CLAIM FOR RELIEF**

5 **Declaratory Relief Regarding Invalidity**

6 15. Symantec incorporates herein the allegations of paragraphs 1-11.

7 16. An actual and justiciable controversy exists between Plaintiff Symantec and
8 Defendant Crossroads as to the invalidity of the patents-in-suit, which is evidenced by
9 Crossroads' allegations that Veritas' products, later acquired by Symantec, as well as other
10 Symantec products infringe valid claims of the patents-in-suit, and Symantec's allegations
11 herein.

12 17. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*,
13 Symantec requests the declaration of the Court that the patents-in-suit are invalid under the
14 Patent Act, 35 U.S.C. §§ 41 *et seq.*, including but not limited to sections 102, 103, and 112.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff Symantec respectfully requests that the Court enter
17 declaratory judgment as follows:

18 1. That Symantec does not infringe and has not infringed, directly or indirectly,
19 any of the patents-in-suit;

20 2. That the patents-in-suit are invalid;

21 3. That Crossroads, and all persons acting on its behalf or in concert with it, be
22 permanently enjoined and restrained from charging, orally or in writing, that any of the patents-
23 in-suit is infringed by Symantec, directly or indirectly;

24 4. That Symantec be awarded its costs, expenses and reasonable attorney fees in
25 this action; and

26 5. That Symantec be awarded such other and further relief as the Court may deem
27 appropriate.

28

DEMAND FOR JURY TRIAL

Plaintiff Symantec respectfully demands a jury trial in this action.

Dated: December 19, 2008

LATHAM & WATKINS LLP

By Mark A. Flagel
Mark A. Flagel
Attorneys for Plaintiff
SYMANTEC CORPORATION

JS 44^b (Rev. 12/07) (cand rev 1-16-08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

<p>I. (a) PLAINTIFFS</p> <p>Symantec Corporation</p>	<p>DEFENDANTS</p> <p>Crossroads Systems, Inc.</p>
<p>(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)</p>	<p>County of Residence of First Listed Defendant Travis county, Texas (IN U.S. PLAINTIFF CASES ONLY)</p>
<p>(c) Attorney's (Firm Name, Address, and Telephone Number)</p> <p>Mark Flagel, David Nelson, Yury Kapgan & Jennifer Bauer LATHAM & WATKINS LLP, 355 South Grand Avenue Los Angeles, CA 90071-1560, Tel: (213) 485-1234</p>	<p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Attorneys (If Known)</p> <p>C08 05687</p>

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)		III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)	
		(For Diversity Cases Only)	
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	Citizen of This State <div style="display: inline-block; width: 100px;"> <input type="checkbox"/> 1 PTF <input type="checkbox"/> 1 DEF </div>	Incorporated or Principal Place of Business In This State <div style="display: inline-block; width: 100px;"> <input type="checkbox"/> 4 PTF <input type="checkbox"/> 4 DEF </div>
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	Citizen of Another State <div style="display: inline-block; width: 100px;"> <input type="checkbox"/> 2 PTF <input type="checkbox"/> 2 DEF </div>	Incorporated and Principal Place of Business In Another State <div style="display: inline-block; width: 100px;"> <input type="checkbox"/> 5 PTF <input type="checkbox"/> 5 DEF </div>
		Citizen or Subject of a Foreign Country <div style="display: inline-block; width: 100px;"> <input type="checkbox"/> 3 PTF <input type="checkbox"/> 3 DEF </div>	Foreign Nation <div style="display: inline-block; width: 100px;"> <input type="checkbox"/> 6 PTF <input type="checkbox"/> 6 DEF </div>

IV. NATURE OF SUIT (Place an "X" in One Box Only)						
CONTRACT		TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment	
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury —	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal	<input type="checkbox"/> 410 Antitrust	
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> Med. Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 28 USC 157	<input type="checkbox"/> 430 Banks and Banking	
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 365 Personal Injury — Product Liability	<input type="checkbox"/> 630 Liquor Laws	PROPERTY RIGHTS	<input type="checkbox"/> 450 Commerce	
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	PERSONAL PROPERTY	<input type="checkbox"/> 650 Airline Regs.	<input checked="" type="checkbox"/> 830 Patent	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 480 Consumer Credit	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 371 Truth in Lending	LABOR	SOCIAL SECURITY	<input type="checkbox"/> 490 Cable/Sat TV	
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 810 Selective Service	
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 850 Securities/Commodities/Exchange	
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 875 Customer Challenge	
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 12 USC 3410	
			<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 865 RS1 (405(g))	<input type="checkbox"/> 890 Other Statutory Actions	
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		<input type="checkbox"/> 891 Agricultural Acts	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence		FEDERAL TAX SUITS	<input type="checkbox"/> 892 Economic Stabilization Act	
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	Habeas Corpus:		<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 893 Environmental Matters	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 530 General		<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 894 Energy Allocation Act	
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	IMMIGRATION		<input type="checkbox"/> 895 Freedom of Information Act	
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 463 Habeas Corpus — Alien Detainee		<input type="checkbox"/> 950 Constitutionality of State Statutes	
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 465 Other Immigration Actions			

V. ORIGIN (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	Transferred from <input type="checkbox"/> 5 another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	Appeal to District <input type="checkbox"/> 7 Judge from Magistrate Judgement
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VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 35 U.S.C. § 1, et seq.
	Brief description of cause: Declaratory Judgment of Invalidity and Non-infringement of U.S. Patents

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** **CHECK YES only if demanded in complaint:**
JURY DEMAND: ☒ Yes ☐ No

VII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)
 (PLACE AND "X" IN ONE BOX ONLY) ☐ SAN FRANCISCO/OAKLAND ☐ SAN JOSE

ORIGINAL
DATE _____
IX. D
(PDA)
VII.
VI.

FAXED

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

- Auto (22)—Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

Other P/PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
 - Asbestos Property Damage
 - Asbestos Personal Injury/Wrongful Death
- Product Liability (not asbestos or toxic/environmental) (24)
- Medical Malpractice (45)
 - Medical Malpractice—Physicians & Surgeons
 - Other Professional Health Care Malpractice
- Other P/PI/PD/WD (23)
 - Premises Liability (e.g., slip and fall)
 - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
 - Intentional Infliction of Emotional Distress
 - Negligent Infliction of Emotional Distress

Non-P/PI/PD/WD (Other) Tort

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
 - Legal Malpractice
 - Other Professional Malpractice (not medical or legal)
- Other Non-P/PI/PD/WD Tort (35)
- Employment**
 - Wrongful Termination (36)
 - Other Employment (15)

Contract

- Breach of Contract/Warranty (06)
- Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)
- Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)
- Negligent Breach of Contract/Warranty
- Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
- Collection Case—Seller Plaintiff
- Other Promissory Note/Collections Case
- Insurance Coverage (not provisionally complex) (18)
 - Auto Subrogation
 - Other Coverage
- Other Contract (37)
 - Contractual Fraud
 - Other Contract Dispute

Real Property

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
 - Writ of Possession of Real Property
 - Mortgage Foreclosure
 - Quiet Title
 - Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

Judicial Review

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
 - Writ—Administrative Mandamus
 - Writ—Mandamus on Limited Court Case Matter
 - Writ—Other Limited Court Case Review
- Other Judicial Review (39)
 - Review of Health Officer Order
 - Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

- Enforcement of Judgment (20)
 - Abstract of Judgment (Out of County)
 - Confession of Judgment (non-domestic relations)
 - Sister State Judgment
 - Administrative Agency Award (not unpaid taxes)
 - Petition/Certification of Entry of Judgment on Unpaid Taxes
 - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

- RICO (27)
- Other Complaint (not specified above) (42)
 - Declaratory Relief Only
 - Injunctive Relief Only (non-harassment)
 - Mechanics Lien
 - Other Commercial Complaint Case (non-tort/non-complex)
 - Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

- Partnership and Corporate Governance (21)
- Other Petition (not specified above) (43)
 - Civil Harassment
 - Workplace Violence
 - Elder/Dependent Adult Abuse
 - Election Contest
 - Petition for Name Change
 - Petition for Relief from Late Claim
 - Other Civil Petition